

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:05-CR-256

v.

HON. ROBERT HOLMES BELL

NICHOLAS CASTRO BENITEZ,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Nicholas Castro Benitez has filed a motion for modification or reduction of sentence (ECF No. 53) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission.

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department filed a sentence modification report on December 30, 2015 (ECF No. 59). In its report, the probation department recommended the defendant is eligible for reduction in sentence based on defendant currently being an inmate, USSG § 2D1.1 was used in the guideline calculations, and the guideline range applicable to the defendant subsequently has been lowered as

a result of the retroactive amendment to the Sentencing Guidelines (782). A reduction of sentence is consistent with the policy statements of the U.S. Sentencing Commission.

The Defendant filed a response to the Sentence Modification Report (ECF No. 60) concurring with the probation department's assessment that Defendant is entitled to a reduction of sentence, but is requesting an additional reduction in recognition of Defendant's "exemplary" conduct while incarcerated.

The government filed a response to the Sentence Modification Report (ECF No. 61) and does not object to the recommendation by probation, but opposes any additional relief, stating defendant's disciplinary record is not unblemished and an additional reduction would give defendant an unfair windfall to other defendants incarcerated for non-drug offenses, many of which are serving comparable sentences. The Court agrees.

NOW THEREFORE, IT IS HEREBY ORDERED that Defendant's motion for modification of sentence (ECF No. 53) pursuant to 18 U.S.C. § 3582(c)(2) is **GRANTED**. Defendant Nicholas Castro Benitez's sentence shall be reduced to **212 months**. An order effectuating the sentence reduction shall issue forthwith.

Dated: February 22, 2016

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE